



**DEPARTMENT OF CORRECTIONS  
MONTANA STATE PRISON  
OPERATIONAL PROCEDURE**

Procedure No. MSP 1.1.17	Subject: <b>PRISON RAPE ELIMINATION ACT OF 2003 (PREA)</b>
Reference: DOC Policy No. 1.1.17	Page 1 of 16 and Attachments
Effective Date: Sept. 12, 2007	Revised: July 18, 2018
Signature: /s/ Jim Salmonsens/ Interim Warden	

## **I. PURPOSE**

The Montana State Prison has zero tolerance relating to all forms of sexual abuse and sexual harassment in accordance with the standards set forth in the *Prison Rape Elimination Act of 2003 (PREA)*.

## **II. DEFINITIONS**

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility, or program operation and management.

Department Employee (Employee) – A person employed by the Department of Corrections who has attained permanent status or is eligible to attain permanent status, as provided in 2-18-601, MCA; volunteers, interns, temporary and short-term workers; this term does not include service providers.

Intersex – A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

Incarcerated Inmate – Any individual detained in a Department-owned, operated, or contracted facility that is sentenced or committed to Department of Corrections supervision.

Law Enforcement Agency of Jurisdiction (LEAJ) – The government agency, i.e. sheriff's office or local police department, operating within their defined area of responsibility.

PREA Coordinator – The Department position responsible for administration and management of the Department-wide PREA program including but not limited to compliance, policy and procedure development, staff training, inmate education, and records and statistical tracking.

Qualified Health Care Professionals – Physicians, physician assistants, nurses, nurse practitioners, dentists, mental health professionals and others who by virtue of their education, credentials, and experience are permitted by law to evaluate and care for inmates, including contracted or fee-for-service professionals.

Qualified Mental Health Professionals – Psychiatrists, psychologists, psychiatric social workers, psychiatric nurses, licensed professional counselors and others who by virtue of their education, credentials, and experience are permitted by law to evaluate and care for the mental health needs of inmates.

Service Providers – This term includes contracted persons or other vendors providing service whose assignment is primarily on Department premises, e.g. facility or program office.

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Sexual abuse of an inmate by another inmate – Sexual acts, sexual contact or any other intentional touching, either directly, through the clothing or with an object, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation, in which the victim does not consent, is coerced by overt or implied threats of violence, or is unable to consent or refuse.

Sexual abuse of an inmate by an employee or service provider – Sexual acts, sexual contact or any other intentional contact, either directly, through the clothing or with an object, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, any attempt, threat, or request by an employee or service provider to engage in these activities, any display by an employee or service provider of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, or voyeurism by an employee or service provider, when these acts are unrelated to official duties or where the employee or service provider has the intent to abuse, arouse, or gratify sexual desire.

Sexual Harassment – Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed toward another or repeated verbal comments or gestures of a sexual nature to an inmate by an employee or service provider.

Transgender – A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.

Volunteer – Any person who has been approved to provide services for Department programs without compensation.

Voyeurism – An invasion of privacy of an inmate by an employee or service provider for reasons unrelated to official duties.

#### **IV. DEPARTMENT DIRECTIVES**

##### **A. General Requirements**

1. MSP will comply with all applicable standards under *28 CFR Part 115, Prison Rape Elimination Act of 2003*. Documentation of compliance with all standards will be maintained by the facility in the responsible department(s).
2. All staff will immediately respond to allegations of sexual abuse and sexual harassment.
3. Designated investigators will fully investigate reported incidents. Supervisors will pursue disciplinary action, and refer for investigation those who violate the requirements set forth in this procedure.
4. The Warden, or designee, will assign a PREA compliance manager responsible for the following:
  - a. coordinating facility PREA-related activities with the PREA coordinator;
  - b. ensuring facility compliance with all PREA standards;
  - c. ensuring facility compliance with PREA training requirements; and
  - d. tracking and reporting PREA allegations and statistics to the Department PREA coordinator.

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## **B. Prevention and Intervention**

1. Employees must be alert to situations in which sexual abuse or sexual harassment might occur and be capable of identifying indicators of sexual abuse and sexual harassment. Any identified indicator will be immediately reported to Command Post through the incident report form. Any immediate threat to an inmate will be reported verbally to Command Post via phone or radio communication.
2. When planning any substantial expansion or modification of existing facilities, the facility and the department must consider the effect of the design, acquisition, expansion, or modification upon the facility's and department's ability to protect inmates from sexual abuse. The PCM must be notified at the beginning of any planning phase for expansion or modifications.
3. When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the facility and department must consider how such technology may enhance the facility's and department's ability to protect inmates from sexual abuse. The PCM must be notified at the beginning of any planning phase for installing or updating technology.
4. The Warden in consultation with the PCM and any other staff deemed appropriate, will develop, document, and make best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect inmates against abuse. In circumstances where the staffing plan is not complied with, the facility will document and justify all deviations from the plan within the Command Post log book and on the staff schedule itself. The documentation will be retained within Command Post for a minimum of one-year for reference. Achieved forms will be routed to property for storage to be kept for a minimum of 3 years.
5. The Warden, or designee, will review the staffing plan annually, in consultation with the PREA coordinator, to assess and document whether adjustments are needed. The meeting will be documented and notes kept by the PREA compliance manager for future reference.
6. The Warden will require intermediate-level and higher-level staff to conduct random unannounced rounds to identify and deter employee or service provider sexual abuse and sexual harassment. These rounds must be documented in an unannounced rounds log and cover all shifts and all areas of the facility. Staff is prohibited from alerting others of the conduct of such rounds. The following positions are responsible for these rounds:
  - a. Warden
  - b. Associate Warden(s)
  - c. Captains
  - d. Lieutenants
  - e. Unit Managers
  - f. Program Manager(s) as selected by the Warden.
7. MSP will identify, assess, and manage inmates with special needs, including those who are potentially vulnerable or dangerous, to provide safe housing, adequate protection, and programmatic resources to meet their needs in accordance with *DOC Policy 4.2.2 Special Needs Inmates* and *MSP Procedure 4.2.1 Inmate Classification*.

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8. Transgender and intersex inmates will be given the opportunity to shower separately from other inmates either through physical separation by separate shower stalls, or by time-phasing or scheduling of showers. Inmates that are deemed to be transgender or intersex by definition may send an *Offender/Staff Request* (OSR) to the Unit Manager or Shift Commander requesting the accommodation. All inmate accommodations will be made through a collaborated effort by the Unit Manager and Shift Commander; and each accommodation will be done on a case by case basis.
9. Staff will follow *MSP 4.2.1 Inmate Classification* and will not place lesbian, gay, bisexual, or transgender inmates in dedicated units, or wings solely on the basis of such identification or status.
10. Victims of sexual abuse and inmates at high risk for sexual victimization will not be placed in segregated housing for protective purposes unless an assessment of all available alternatives has been made and a determination is made that there is no alternative means of separation. The assessment is completed by the Unit Management Team or Command Post if a member of the Unit Management Team is not on site at the time of the occurrence. If MSP cannot conduct such an assessment immediately, MSP may hold the inmate in segregated housing for up to 24 hours while completing the assessment. The facility will clearly document the basis for the facility's concern for the inmate's safety and the reason no alternative means of separation could be arranged on the ADR. MSP will review each inmate placed in segregated housing for protective purposes every 30 days, in accordance with *MSP Procedure 4.2.1 Inmate Classification*.
11. Inmates placed in segregated housing for protective purposes will have access to programs, privileges, education, and work opportunities to the extent possible. If access is restricted, the facility will document what opportunities have been limited, the duration of the limitation and the reasons for such limitations in accordance with *MSP Procedure 4.2.1 Inmate Classification*.

### C. Training

1. Prior to working with inmates, all employees with direct and/or incidental contact with inmates must receive documented PREA training. If an employee is unable to attend comprehensive PREA classroom training prior to contact with inmates, they must receive pre-service training in the form of reviewing the PREA policy and a PREA brochure and signing an acknowledgment form. The employee must then attend the next available classroom training. The MSP trainers will track these and ensure completion occurs as required.
2. Comprehensive classroom training and pre-service training will include, but is not limited to:
  - a. review of this procedure, *DOC Policy 1.1.17 PREA*, *DOC Policy 1.3.12 Staff Association and Conduct with Inmates*, appropriate site-specific procedures, and any other applicable state or federal laws;
  - b. the agency's zero tolerance policy for sexual abuse and sexual harassment;
  - c. how employees and service providers fulfill their responsibilities under the MSP and department's sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
  - d. an inmate's right to be free from sexual abuse and sexual harassment;
  - e. inmate and employee rights to be free from retaliation for reporting sexual abuse and harassment;

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- f. the dynamics of sexual abuse and harassment in confinement;
  - g. common reactions of sexual abuse and sexual harassment victims;
  - h. how to detect and respond to signs of threatened and actual sexual abuse;
  - i. how to avoid inappropriate relationships with inmates;
  - j. how to communicate effectively and professionally with inmates who might be lesbian, gay, bisexual, transgender, intersex (LGBTI) or gender nonconforming;
  - k. how to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities;
  - l. MSP procedures on sharing confidential information; and
  - m. gender-specific information tailored to the gender of the inmates at MSP.
3. Each employee will attend refresher training in odd number years to cover the topics in C.2 above. In even number years, employees will receive refresher information on current sexual abuse and sexual harassment policies. MSP trainers will schedule and conduct this training in conjunction with the Department Professional Development Bureau. The Warden will ensure compliance by sending the notice for this training.
4. All volunteers and service providers who have contact with inmates will be trained at a minimum on the Department's zero tolerance policy and corresponding MSP procedure concerning sexual abuse and harassment, prevention, detection, and response methods, and how to report such incidents. The level and type of training provided to volunteers and service providers will be based on the services they provide and the level of contact they have with inmates, and could rise to the level of employee training referenced in C.3 above. Volunteers and service providers will sign a training acknowledgment form. The MSP training department will keep the documentation of this training.
5. Medical and mental health providers will receive additional, specialized training relevant to their roles in detecting and assessing signs of sexual abuse and sexual harassment, preservation of evidence, and responding effectively to victims of sexual abuse and sexual harassment. The documentation of this training will be kept in the official employee training record and in the appropriate related department.
6. Employees who conduct sexual abuse investigations will receive additional training in conducting such investigations in confinement settings, to include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collections, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral. This training is conducted by the PREA coordinator and DOC investigators, or designees.
7. All training will be documented, through signature or electronic verification, showing acknowledgement that the employee, volunteer, or service provider received and understood the training. For comprehensive training, staff will use the Comprehensive PREA Training Acknowledgment.

**D. Inmate Education**

1. Within 72 hours of facility intake for inmates, employees will communicate to inmates, verbally and in writing:
- a. information about the Department's zero tolerance of sexual abuse and sexual harassment;

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- b. how to report incidents or suspicion of abuse or harassment; and
  - c. this procedure, *DOC 1.3.12 Staff Association and Conduct with Inmates*, *DOC 3.3.3 Inmate Grievance Program*, and corresponding MSP procedures.
  - d. this communication is completed by the admissions staff, case manager(s), or designees.
  - e. documentation of this communication will be retained in the inmate's mini-file under the PREA section.
2. Within 30 days of intake, MSP will provide education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding facility procedures for reporting and responding to such incidents.
  - a. this documentation is completed by the admissions staff, case manager(s), or designees.
  - b. documentation of this communication will be retained in the inmates mini-file under the PREA section.
3. Inmates will receive education upon transfer from a different facility regarding any PREA-related policies and procedures of MSP that differ from those of the previous facility.
  - a. this documentation is completed by the admissions staff, case manager(s), or designees.
  - b. documentation of this communication will be retained in the inmate's mini-file under the PREA section.
4. MSP must take appropriate steps to ensure inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the facility's efforts to prevent, detect and respond to sexual abuse and sexual harassment. Such steps will include access to interpreters and written materials provided in formats or through methods that ensure effective communication. The facility will provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills. Utilization of the interpreter service will be offered as an option for these inmates if it meets their identified needs.
5. MSP will maintain documentation of inmate participation in PREA education sessions and have inmates sign an acknowledgment form.
6. MSP will ensure that PREA information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats. Unit managers are responsible for monthly checks of their units, and supervisors are responsible for monthly checks of the general building areas. The PREA compliance manager is responsible for random checks to ensure compliance.

**E. Screening for Risk of Victimization or Abusiveness**

1. Risk assessment of all inmates using an objective screening instrument for victimization or abusiveness will take place within 72 hours of intake into MSP.
  - a. this documentation is completed by the admissions staff, case manager(s), or designees.
  - b. documentation of this communication will be retained in the inmate's mini-file under the PREA section.

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2. Within 30 days of intake the facility will reassess the inmate's risk of victimization or abusiveness, taking into consideration any additional relevant information received by MSP since the initial screening.
  - a. this documentation is completed by the admissions staff, case manager(s), or designees.
  - b. documentation of this communication will be retained in the inmate's mini-file under the PREA section.
3. MSP will conduct additional screening assessments when warranted based on any new information, referral, request, or incident of sexual abuse. The PREA compliance manager will send a reminder notice when an incident has been reported to ensure the designated staff complete these tasks. Verification of completion will be submitted to the PREA compliance manager to add to the official case record.
4. The PREA Risk Assessment will consider, at a minimum, the following criteria for risk of sexual victimization:
  - a. whether the inmate has a mental, physical, or developmental disability;
  - b. the age of the inmate;
  - c. the physical build of the inmate;
  - d. whether the inmate has previously been incarcerated;
  - e. whether the inmate's criminal history is exclusively nonviolent;
  - f. whether the inmate has prior convictions for sex offenses against an adult or child;
  - g. whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
  - h. whether the inmate has previously experienced sexual victimization; and
  - i. the inmate's own perception of vulnerability.
5. The screening will consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse in assessing the inmate's risk for being sexually abusive.
6. Inmates will not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked during screening or reassessment.
7. When the risk assessment indicates an inmate has experienced prior sexual victimization or previously perpetrated sexual abuse, whether it occurred in the community or in an institutional setting, the facility will ensure the inmate is offered a follow-up meeting with a qualified mental health professional within 14 days of the assessment. Notification occurs on a Mental Health Referral Form. Documentation of this follow-up will be retained by the mental health department and verification of completion will be sent to the requesting staff member to be added to the mini-file.
8. Information from the risk assessment for victimization or abusiveness will be provided on a need to know basis to individuals who make housing, bed, work, education, and program assignments and used with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive. This information is kept in the inmate mini-file, in the PREA section, for reference when making such decisions.
9. In relation to a transgender or intersex inmate, MSP will review each inmate before making other housing and programming assignments. MSP will consider on a case-by-case basis the placement's effect on the inmate's safety, whether the placement would present management or

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security problems, and whether such placement would likely endanger the safety of other inmates. These will be reviewed with the Warden or designee.

10. Placement and programming assignments for each transgender or intersex inmate will be reassessed at least twice each year to review any threats to safety experienced by the inmate. A transgender or intersex inmate's own views with respect to his or her own safety will be given serious consideration. These are completed by the case manager as ordered by the PREA compliance manager. Mental health professionals will assist in this process if deemed appropriate.

## **F. Inmate Reporting**

1. MSP will provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or employees for reporting sexual abuse and sexual harassment, and employee neglect or violation of responsibilities that may have contributed to such incidents.
2. MSP will provide at least one way for inmates to report abuse or harassment to a public or private entity that is not part of the department, and that is able to receive and immediately forward any reports from inmates of any sexual abuse or harassment to facility or department officials, allowing the inmate to remain anonymous upon request. The contact information for this agency will be made available to inmates through an educational pamphlet and posters.
3. Inmates who are victims of or have knowledge of sexual abuse or sexual harassment should immediately report the incident by one of the following methods:
  - a. report the incident to an employee or service provider verbally, in writing, anonymously or through a third party;
  - b. utilize the "locked box" formal grievance procedure in accordance with *MSP Procedure 3.3.3 Inmate Grievance Program*;
  - c. use the Department-approved free confidential telephone hotline operated by an external agency; or
  - d. use the inmate phone system following the instructions on the phone to leave a message for a designated MSP employee.
4. Employees and service providers will accept reports verbally, in writing, anonymously, and from third parties and will promptly document any verbal reports via the incident report form. These will be submitted immediately upon completion to Command Post.
5. Reports made in bad faith, which includes deliberately malicious reports by inmates or other parties, will result in disciplinary action and/or criminal charges.

## **G. First Responder Duties**

1. Upon learning of an allegation that an inmate was sexually abused, the first security staff to respond to the report will:
  - a. separate the alleged victim and alleged perpetrator;
  - b. preserve and protect any crime scene until appropriate steps can be taken to collect any evidence, in accordance with *DOC 3.1.28 Crime Scene and Physical Evidence Preservation*;

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- c. if the abuse allegedly occurred within a time period that allows for the collection of physical evidence, typically 72 hours, request that the alleged victim and ensure that the alleged abuser not take any actions that could destroy physical evidence such as washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.
2. If the first employee or service provider to learn of an allegation that an inmate was sexually abused is not security staff, the employee or service provider will request that the alleged victim not take any actions that could destroy physical evidence, take reasonable steps to ensure the victim's safety, and immediately notify security staff.
3. The Warden in conjunction with the PREA compliance manager will maintain a written institutional plan to coordinate actions taken in response to an incident of sexual abuse among employee and service provider first responders, medical and mental health practitioners, investigators, and facility leadership. The Coordinated Response Plan will be kept in Command Post for reference.

#### **H. Employee and Service Provider Reporting**

1. MSP employees and service providers will report immediately any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the department; retaliation against inmates or employees who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
2. Employees and service providers may privately report sexual abuse or sexual harassment through their chain of command or by notifying the department PREA coordinator or MSP PREA compliance manager.
3. If the alleged victim is at least 60 years old or is a person with a developmental disability, the administrator, or designee, must report the allegation to the Department of Public Health and Human Services in accordance with *52-3-811, MCA*.
4. Apart from reporting to designated supervisors or officials, employees and service providers will not reveal any information related to a sexual abuse report to anyone other than to the extent necessary to make treatment, investigation, and other security and management decisions.
5. Unless otherwise precluded by law, medical and mental health practitioners will report sexual abuse according to MSP procedures and will inform inmates of their duty to report, and the limitations of confidentiality, at the initiation of services.
6. Allegations that an inmate was sexually abused while at another facility must be reported by the Warden or the PREA compliance manager on the Warden's behalf to the administrator of the facility where the abuse occurred as soon as possible but no later than 72 hours after the initial report.
7. Potential criminal conduct will be reported to the Office of Investigations. The Office of Investigations will determine if they accept the case as criminal. If it is deemed criminal, an administrative case will be opened in conjunction with the criminal case. Emergent cases will be reported by the Command Post to the on-call investigator.

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8. Sexual abuse or harassment by an employee, service provider, or inmate will be reported in accordance with *DOC Policy 1.1.6 Priority Incident Reporting and Acting Director*.
9. Reports of sexual abuse or sexual harassment by an employee, service provider, or inmate will be forwarded to the Office of Investigations, MSP PREA compliance manager and the Department PREA coordinator within one business day.
10. Any employee or service provider who fails to report an allegation, or coerces or threatens another person to submit inaccurate, incomplete, or untruthful information may face dismissal or other disciplinary action.

#### **I. Retaliation Monitoring**

1. MSP will not tolerate retaliation against inmates, employees, or other parties for reporting sexual abuse or sexual harassment or cooperating with an investigation. Individuals that retaliate against any inmate or witness are subject to disciplinary action.
2. MSP will employ multiple protective measures, such as transfers or removals to separate victims from abusers, and emotional support services.
3. MSP will monitor, for at least 90 days, the conduct and treatment of inmates and employees who reported sexual abuse or sexual harassment and inmates who were reported to have suffered sexual abuse or sexual harassment to prevent retaliation. Monitoring will continue beyond 90 days if there is a continuing need. Monitoring will be completed by the case manager. These records will be submitted to the PREA compliance manager for keeping with the case file.
4. Monitoring will include reviewing any inmate disciplinary reports, housing or program changes, or negative performance reviews or reassignments of employees. For inmates, monitoring will also include periodic status checks.
5. If an inmate is transferred from MSP to another Department facility during his or her monitoring, the PREA compliance manager will notify the receiving facility of the inmate's monitoring status so the receiving facility may continue the monitoring for the remainder of the 90 days, or beyond if there is a continuing need.
6. MSP will act promptly to remedy any detected retaliation. The Warden, or designee, will be notified of any allegations of retaliation. Appropriate action will be ordered to remedy any valid claims. Documentation of such action will be kept in the related case file.
7. MSP Case Managers are responsible for retaliation monitoring.
8. MSP's obligation to monitor retaliation may be terminated if the allegation is determined to be unfounded. The PREA compliance manager will notify the case manager in writing if this occurs.

#### **J. Medical, Mental Health, and Victim Services**

1. Medical and mental health services for victims will be consistent with the community level of care.

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2. MSP will provide services to inmates alleged to be victims of sexual abuse or sexual harassment within a confinement setting. Services must be made available without financial cost to the victim and must include, at minimum:
  - a. access to medical examination and treatment to include follow up care and referrals;
  - b. mental health crisis intervention and treatment;
  - c. timely access to emergency contraception, STD prophylaxis, and all pregnancy-related tests and services; and
  - d. access to a victim advocate or rape crisis center that can offer emotional support services throughout the investigative process, or access to a qualified employee or service provider; contact information for these services will be available to staff and inmates, where applicable through brochures, posters, and the coordinated response plan.
3. MSP employees and service providers will adhere to the following standards for examination of victims of sexual abuse or sexual harassment:
  - a. if the victim refuses medical or mental health attention, document the refusal on the [Medical Treatment Refusal](#) form;
  - b. if reported within a time period which allows for collection of physical evidence, typically within 72 hours of the incident, and with the victim's permission, immediately transport the victim to a medical facility equipped with medical personnel certified as Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs), or if none are available, to a medical facility with other qualified medical practitioners, to evaluate and treat sexual assault/rape victims; and
  - c. if reported more than 72 hours after the incident, and with the victim's permission, adhere to the following:
    - i. refer the victim to appropriate health care providers responsible for treatment and follow up care for sexually transmitted or other communicable diseases who will complete a patient history, conduct an examination to document the extent of physical injury and determine whether referral to another medical facility is required; and
    - ii. upon request from Command Post, or DOC Investigations, transport the victim to a community medical facility for evidence collection.
4. Qualified mental health professionals will provide crisis intervention and ongoing services for victims of sexual abuse and sexual harassment and for other inmates affected.
5. MSP will attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by qualified mental health professionals. Documentation of such attempts will be provided to the PREA compliance manager for the case file.
6. MSP will provide all inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers of local, state, or national victim advocacy or rape crisis organizations. MSP will enable reasonable communication between inmates and these organizations in as confidential a manner as possible. MSP will inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities.

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## **K. Investigative Protocols**

1. All reported incidents of sexual abuse and sexual harassment will be investigated. Criminal investigations will be conducted by the Department's Office of Investigations in accordance with *DOC Policy 3.1.19 Investigations*.
2. Administrative investigations of sexual abuse or sexual harassment allegations will be conducted by trained Department employees.
3. The Warden, or designees, will ensure all staff follow appropriate evidence procedures outlined in *DOC Policy 3.1.28 Crime Scene and Physical Evidence Preservation*.
4. A Request for Investigation (RFI) for all allegations of sexual abuse and sexual harassment will be sent to the Office of Investigation, the PREA compliance manager, and the PREA coordinator to initiate an investigation.
5. The Office of Investigations will forward reports that do not rise to the level of a criminal investigation to the Office of Human Resources and/or the Warden, or designee, to be assigned to an investigator for an administrative investigation.
6. All allegations of sexual abuse or sexual harassment that are criminally investigated will also be administratively investigated. The administrative investigation will begin when the Office of Investigations determines that the administrative investigation will not interfere with the criminal investigation as provided in *DOC 1.3.13 Administrative Investigations*.
7. Administrative investigations of employees will be conducted in accordance with *DOC 1.3.13 Administrative Investigations*; individuals assigned to conduct administrative investigations of employees will work in cooperation with the Office of Human Resources.
8. Administrative investigations of inmate sexual abuse or sexual harassment of an inmate will be conducted by Department employees who have received specialized training in conducting sexual abuse and sexual harassment investigations in a confinement setting.
9. Investigators will not use a standard higher than preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated in administrative investigations.
10. Inmates who allege sexual abuse will not be required to submit to a polygraph examination as a condition for proceeding with the investigation of an allegation.
11. MSP will not rely on inmate interpreters for investigations regarding sexual abuse or sexual harassment except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties or the investigation of the inmate's allegations. Interpreter service information will be posted in the Command Post.
12. Investigative materials including, but are not limited to incident reports, statements, and investigative reports will be stored in a designated investigative case file. Investigative case files must be submitted to the Investigations Manager or designee, the PREA compliance manager, and the PREA coordinator.

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13. All administrative and criminal investigation written reports will be retained for as long as the alleged abuser is incarcerated or employed by MSP or the Department, plus five years.

**L. Reporting to Inmates**

1. Following an investigation into an inmate's allegation of sexual abuse or sexual harassment at MSP, MSP will inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. The PREA compliance manager will ensure the notice is hand delivered to the inmate.
2. Following an inmate's allegation that an employee or service provider has committed sexual abuse against the inmate, the PREA compliance manager will inform the inmate, unless the allegation is unfounded, whenever:
  - a. The employee or service provider is no longer posted within the inmate's unit;
  - b. The employee or service provider is no longer employed at MSP;
  - c. MSP learns that the employee or service provider has been indicted on a charge related to sexual abuse within the facility; or
  - d. MSP learns that the employee or service provider has been convicted on a charge related to sexual abuse within the facility.
3. Following an inmate's allegation that he or she has been sexually abused by another inmate, the PREA compliance manager will inform the alleged victim whenever:
  - a. MSP learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
  - b. MSP learns that the alleged abuser has been convicted on a charge related to sexual abuse within a facility.
4. All such notifications or attempted notifications will be documented.
5. MSP's obligation to report will terminate if the inmate is released from the department's custody.

**M. Incident Reviews**

1. MSP will conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. Such review will occur within thirty (30) days of the conclusion of the investigation. The PREA compliance manager will schedule these reviews and coordinate the participation of all required parties.
2. The review team will include upper-management from MSP, MSP's PREA compliance manager, line supervisors, investigators, qualified medical or mental health professionals, and other employees with direct involvement
3. The review team will:
  - a. consider whether the allegation or investigation indicates a need to change policy or procedure to better prevent, detect or respond to sexual abuse;
  - b. consider whether the incident or allegation was motivated by race, ethnicity, gender identity, LGBTI status or perceived status, STG affiliation or was motivated or caused by other group dynamics at the facility;

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- c. examine the area where the incident allegedly occurred to assess whether the physical barriers in the area may enable abuse;
  - d. assess the adequacy of staffing levels in that area during different shifts;
  - e. assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
  - f. prepare a report of its findings and any recommendations for improvement and submit the report to the facility administrator, the Department PREA coordinator and facility PREA compliance manager.
  - g. The findings will be kept with the case file associated to the incident.
4. The facility will implement the recommendations for improvement or document its reasons for not doing so.

**N. Data Collection, Review, Storage, Publication and Destruction**

1. MSP will collect and submit data in accordance with DOC 1.1.17, using a system established by the Department and as directed by the PREA coordinator. Such data will be analyzed to determine possible corrective action or improvement.
2. MSP will collect accurate, uniform data for every allegation of sexual abuse at facilities and programs under its direct control using a standardized instrument and definitions set forth in this procedure.
3. The incident-based data collected will include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Victimization conducted by the Department of Justice.
4. MSP's PREA compliance manager will maintain records of all allegations, investigations, and Incident Review's and report such information to the PREA coordinator. Upon request, the Department will provide all such data from the previous calendar year to the Department of Justice.
5. MSP will maintain sexual abuse data for at least 10 years after the date of its initial collection.

**O. Sanctions**

1. Employees will be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies. Termination is the presumptive disciplinary sanction for employees who have engaged in sexual abuse.
2. Disciplinary sanctions for violations of Department policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) will be commensurate with the nature and circumstances of the acts committed, the employee's disciplinary history, and the sanctions imposed for comparable offenses by other employees with similar histories.
3. All terminations for violations of Department sexual abuse or sexual harassment policies, or resignations by employees who would have been terminated if not for their resignation, will be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

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4. Service providers or volunteers who engage in sexual abuse will be prohibited from contact with inmates and will be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies. The Department will take appropriate remedial measures, and will consider whether to prohibit further contact with inmates, in the case of any other violation of Department sexual abuse or sexual harassment policies by a service provider.
5. Inmates are subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse.
6. Sanctions will be commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories.
7. The disciplinary process will consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.
8. MSP will decide on a case-by-case basis whether to require an inmate to participate in therapy, counseling, or another intervention as a condition of access to programming or other benefits.
9. The agency may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
10. For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred will not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.
11. An inmate may not engage in sexual acts, make sexual proposals or threats or engage in indecent exposure pursuant to *DOC 3.4.2 Prohibited Acts*, and is subject to disciplinary action for violations. The facility may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

## V. CLOSING

Questions concerning this procedure should be directed to MSP's PREA compliance manager.

## VI. REFERENCES

- A. 41-3-201, MCA; 45-5-501, MCA; 45-5-502, MCA; 45-5-503, MCA; 52-3-811, MCA
- B. 4-4281-1 through 4-4281-8; 2008 ACA Standards Supplement
- C. 28 CFR Part 115, Prison Rape Elimination Act of 2003
- D. DOC Policies 1.1.16 Priority Incident Reporting and Acting Director; 1.3.12 Staff Association and Conduct with Offenders; 1.3.13 Administrative Investigations; 1.5.5 Case Records Management; 1.8.1 Victim Services; 3.1.19 Investigations; 3.1.28 Crime Scene and Physical Evidence Preservation; 3.3.3 Inmate Grievance Program; 4.1.2 Inmate Reception and Orientation; 4.2.1 Inmate Classification System; 4.2.2 Special Needs Offenders

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## VII. ATTACHMENTS

Offender PREA Acknowledgement Form	attachment A
Staff PREA Acknowledgment Form	attachment B
PREA: Risk Assessment	attachment C
PREA: Sexual Incident Review	attachment D
PREA Retaliation Monitoring Data Sheet (Monitoring Sheet)	attachment E
PREA Annual Staffing Plan Review (Annual Review)	attachment F
Montana State Prison Refusal of Treatment	attachment G
Request for Mental Health Services	attachment H
MSP Patient Care Protocol	attachment I
MSP Emergency Interview Questionnaire	attachment J